

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Continue
Implementation and Administration of
California Renewables Portfolio Standard
Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

**COMMENTS OF SOLUTIONS FOR UTILITIES, INC. [SFUI] AND CALIFORNIANS
FOR RENEWABLE ENERGY, INC. [CARE] ON THE PROPOSED, PG&E; SCE; AND
SDG&E; SMALL RENEWABLE GENERATOR POWER PURCHASE AGREEMENT
FOR FACILITIES UP TO 3 MEGAWATTS**

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I. INTRODUCTION

On December 19, 2011 the Center for Energy Efficiency and Renewable Technologies (CEERT); Ag Power Group, LLC (AgPower); Sustainable Conservation (SC); Agricultural Energy Consumers Association (AECA); Green Power Institute (GPI); California Wastewater Climate Change Group (CWCCG); California Farm Bureau Federation (Farm Bureau); Fuel Cell Energy (FCE); and FlexEnergy, Inc. (“Joint Parties”) jointly moved for a ruling directing the consideration of an administratively determined avoided cost pricing methodology for use in the

R11-05-005 (RPS) Sec. 399.20 program SFUI and CARE comments on the Joint IOU PPA

Renewable Portfolio Standard (“RPS”) Program Feed in Tariff (“FIT”) at a Workshop to be scheduled during January 2012 that would be part of the record for the Commission’s decision on the Renewable FIT.”

SFUI and CARE are in the understanding and belief that under the federal Public Utility Regulatory Policies Act of 1978 (“PURPA”) all eligible customer generators under AB 920 and/or an electric generation facility under SB 32 are entitled to be provided a “as available must take” standard contract pursuant to these new statutes which also then would comply with the requirements under the authority of the FERC as established by the Federal Power Act (“FPA”) and the PURPA. SFUI’s and CARE’s recommended pricing approach [as was solicited in the “Joint Parties” December 19, 2011 Motion] is for all renewable resources less than 3MW that the energy price be based on the CPUC regulated utility’s avoided cost as specified under the authority of the Federal Energy Regulatory Commission (“FERC”) (see 18 C.F.R. §§ 292.303 and 292.304) with the actual avoided cost rates established under State authority (See 18 C.F.R. §§ 292.302 and 292.304).

On January 10, 2012 the Presiding Commissioner and ALJ issued their Joint “ruling direct[ing] Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) to jointly file on or before February 15, 2012 a single proposed standard form contract for purposes of the Feed-In Tariff program under Section 399.20 of the Public Utilities Code. ^[1]”

Regarding this standard form contract the Commission found “This ruling also sets a workshop for February 22, 2012. The workshop will be held in San Francisco at the Commission’s headquarters at 505 Van Ness Avenue from 9 a.m. to 5 p.m. ... The purpose of

¹ All subsequent code section references are to the Public Utilities Code unless otherwise indicated.

the workshop will be to discuss the proposed contract terms and any terms and conditions that the utilities failed to present a unanimous position... Following the workshop, the utilities are directed to jointly file a revised proposed standard form contract on or before March 7, 2012. Parties are then directed to meet on March 14, 2012... The purpose of this meeting is for the utilities to explain the revisions and for the parties to meet and confer on the topic of filing joint comments.” [Joint ruling at page 3]

On February 22, 2012 Pacific Gas and Electric Company's (U 39-E), Southern California Edison Company's (U 338-E), and San Diego Gas & Electric Company's (U 902-E) submitted their *Proposed Standard Form Contract For the Section 399.20 Feed-In Tariff Program*, in WORD format, which was filed on February 15, 2012, with the California Public Utilities Commission in Docket No. R. 11-05-005. On February 24, 2012, an e-mail from Jaclyn Marks of CPUC stated “Parties should submit any redlined changes to the draft FIT contract to PG&E *by March 5*. The FIT contract is available on the CPUC’s website: http://www.cpuc.ca.gov/PUC/energy/Renewables/hot/sb2_1x.htm. ALJ DeAngelis will adjust the schedule for the next deliverables in order to accommodate this extra time. She will notify the service list of the new dates next week.”

The Joint IOUs’ proposed standard PPA fails to comply with the requirements for a small power production facility that is a qualifying facility under the Public Utility Regulatory Policies Act of 1978 (“PURPA”). In support of the “Joint Parties” December 19, 2011 Motion “for a ruling directing the consideration of an administratively determined avoided cost pricing methodology for use in the Renewable Portfolio Standard (“RPS”) Program Feed in Tariff (“FIT”)”; SFUI and CARE provide a red-lined and final versions of Joint IOUs’ proposed standard PPA on February 27, 2012 in order to provide a simple; PURPA compliant; Standard

Offer Contract; for renewable energy producers of 3 megawatts or less; and so as to provide a template for other Party's to use in their "redlined changes to the draft FIT contract to [submit to] PG&E by March 5".

This seems consistent with Joint ruling's findings regarding the purpose of the upcoming all Parties meeting; "The purpose of this meeting is for the utilities to explain the revisions and for the parties to meet and confer on the topic of filing joint comments".

The Regulated Utilities' Proposed Small Renewable Generator Power Purchase Agreement ("Proposed PPA") for facilities up to 3MW must be rejected almost in its entirety since it preempted under federal law by the Federal Energy Regulatory Commission's ("FERC")'s exclusive jurisdiction over wholesale rates for electricity.

II. SMALL RENEWABLE GENERATOR POWER PURCHASE AGREEMENT PREMATURE

Preliminarily; Solutions for Utilities, Inc. ("SFUI") filed its *Petition for Modification of Decision D.07-07-027 in Rulemaking R.06-05-027 (Continued in Rulemaking R.08-08-009)* -- which are successor docket numbers for the instant Rulemaking R.11-05-005 -- on June 18, 2010. That Petition for Modification ("PFM") has not been ruled on by the CPUC as of today's date. The PFM requests modifications that are relevant to the Proposed PPA being offered by the Regulated Utilities at this time; including, but not limited to, deleting the Market Price Referent ("MPR") as the payment method to Small Generators, curtailment clauses, termination rights, tax components paid on system upgrades, SCE's *Interconnection Facilities Financing and Ownership Agreement*.

Because the issues raised in SFUI's PFM are relevant to many particulars in the Proposed PPA, and it has been over twenty (20) months since submission of the PFM without a ruling by the CPUC, the CPUC should rule on the PFM prior to ruling on the Proposed PPA.

III. FERC HAS EXCLUSIVE JURISDICTION OVER WHOLESALE RATES

Throughout 2005 and 2006, the CPUC and Southern California Edison Co. ("SCE") (described as "SoCal Edison" in FERC documents) participated extensively in FERC proceedings regarding interconnection procedures and agreements for Small Generators (less than 20MW) in the business of wholesale sales in interstate commerce of energy products.

SCE even argues to the FERC at P.93 of Order No. 2006-A that FERC has jurisdiction over all wholesale sales. The courts' and FERC's rulings are clear on this jurisdictional issue that wholesale sales in interstate commerce are a Federal jurisdictional matter and retail sales are state jurisdictional.

One of the purposes for the FERC Small Generator proceedings, as stated at P.512 of Order No. 2006, is clear:

"We conclude that as much standardization of the **rates, terms and conditions** of jurisdictional interconnection service will help eliminate undue discrimination." [Small Generators versus Large Generators.]

Those proceedings resulted in FERC issuing Order No. (s) 2006, 2006-A, and 2006-B with its two attachments, the Small Generator Interconnection Agreement and the Small Generator Interconnection Procedures.

FERC Order No. 2006, Final Rule "Standardization of Small Generator Interconnection Agreements and Procedures," 70 F.R. 34100 (June 13, 2005) [Docket No. RM02-12-000; Order No. 2006] (Issued May 12, 2005).²

² Found at: <http://www.ferc.gov/EventCalendar/files/20050512110357-order2006.pdf>

FERC Order No. 2006-A, “Order on Rehearing”, “Standardization of Small Generator Interconnect Agreements and Procedures,” 113 FERC ¶61,195 [Docket No. RM02-12-001; Order No. 2006-A] 18 CFR Part 35 (Issued November 22, 2005).³

FERC Order No. 2006-B, “Order on Clarification”, “Standardization of Small Generator Interconnect Agreements and Procedures,” 18 CFR Part 35 [Docket No. RM02-12-002; Order No. 2006-B] (Issued July 20, 2006).⁴

FERC Order No. 2006-B has two attachments: The Small Generator Interconnection Agreement (“SGIA”)⁵ and the Small Generator Interconnection Procedures (“SGIP”).⁶ The CPUC and SCE voiced their protests and oppositions to FERC during those proceedings and FERC ruled thereon as demonstrated repeatedly throughout Order No. 2006, 2006-A (see, eg., P.30 and P.31); and 2006-B was promulgated in response **solely** to “SCE’s Request for Clarification of Order No. 2006-A”.

In the Proposed PPA there is no indication at all that PURPA and FERC’s orders were followed. There is no mention at all of FERC’s Order No. (s) 2006, 2006-A and 2006-B and its attached SGIP and SGIA.

Hearings may be the appropriate venue to review whether each clause of the Proposed PPA adheres to FERC’s orders as described herein. Unless and until those determinations are made on a clause-by-clause basis, the CPUC cannot make a determination that the Proposed PPA is PURPA and FERC compliant for use in FERC-jurisdictional wholesales sales in interstate commerce.

³ Found at: <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=10887837>

⁴ Found at: <http://www.ferc.gov/whats-new/comm-meet/072006/E-18.pdf>

⁵ Found at: <http://www.ferc.gov/industries/electric/indus-act/gi/small-gen/agreement.doc>

⁶ Found at: <http://www.ferc.gov/industries/electric/indus-act/gi/small-gen/procedures.doc>

It is obvious, even at a first glance, that the Proposed PPA is illegal in regards to the price to be paid the Small Generator. The FERC has implemented PURPA's regulations that Avoided Cost must be technology specific and tiered sizing, in addition to many other factors. It is absurd that the Proposed PPA using Market Price Referent pricing complies with PURPA and FERC's Avoided Cost requirement; comparing a 500MW Combined Cycle Gas Turbine Large Generator's costs and operations to a 3MW solar or wind Small Generator's costs and operations. This type of outright defiance by a State Regulatory Authority to allow Small Generators into the electric market is exactly why PURPA was created by Congress in 1978.

For the reasons stated herein, SFUI and CARE request the CPUC rule on SFUI's PFM and the CPUC hold hearings or conduct and publish a matrix of FERC's Order No.(s) 2006, 2006-A, 2006-B and attached SGIP and SGIA paragraph by paragraph with the Proposed PPA submitted by the Regulated utilities.

IV. QF SELLERS' RECS ARE UNBUNDLED AND TRADEABLE IN ADDAITION TO AVOIDED COST

Renewable Energy Credits; or RECs; are strictly a state program independent from PURPA pricing for QFs. In 105 FERC ¶61,005 at page 1, Background, Section B, the FERC found regarding the valuation of renewable energy credits " RECs are "tradeable certificates" that correspond to a certain amount of renewable energy generated by a third party." *American Ref-Fuel*, 105 FERC at 61,005. Generally speaking, RECs are inventions of state property law whereby the renewable energy attributes are "unbundled" from the energy itself and the credits can be purchased by companies and sold separately individuals to offset use of energy generated from traditional fossil fuel resources or by government agencies to satisfy certain requirements that these agencies purchase a certain percentage of their energy from renewable sources."

Also in 2003 regarding RECs the FERC found ““States, in creating RECs, have the power to determine who owns the REC in the initial instance, and how they may be sold or traded; *it is not an issue controlled by PURPA*” [*American Ref-Fuel Company* “Order Granting Petition for Declaratory Order”, 105 FERC ¶ 61,004 (2003), Docket No. EL03-133-000, P.23.]

In Decision 11-06-016 issued June 20, 2011 the Commission found regarding the “[v]alue of renewable attributes” at page 44 to 45 “We now turn to the question of whether to include payment for the value of the renewable attributes of electricity in the NSC rate. Again, the statute does not mandate compensation for the value of renewable attributes, but allows the Commission to determine if appropriate justification exists for such compensation...A quick recap of the proposals for pricing renewable attributes is in order. The utilities generally suggest establishing a value for renewable attributes separate from the value of electricity. Specifically, SCE proposes a proxy value based on renewable premiums from voluntary green energy programs as reported by utilities within the WECC and published by the DOE. SCE calculates this renewable premium at 1.83 cents per kWh based on current published data. PG&E and SDG&E both suggest that once REC trading is in place in California, renewable attributes could be priced using the average REC price over a 12-month period.⁷ In the interim period prior to REC trading, SDG&E suggests adding the MPR GHG adder of 0.8 cents/kWh to the electricity portion of the NSC rate if the renewable energy that is purchased is RPS-eligible. PacifiCorp proposes an adder of one cent/kWh.”

The Commission goes on to conclude at page 47 “We adopt the SCE approach as an interim renewable value because ultimately, we prefer a market-based valuation for the

⁷ There is currently no functionality in WREGIS to post a public REC price.

renewable attributes of net surplus generation. Conceptually, we agree with proposals by PG&E, SDG&E and the Joint Solar Parties to value renewable attributes based on the average REC price over a 12-month period once RECs are traded, although this will require a means to obtain public REC prices. Therefore, we will reconsider the appropriate value for renewable attributes once public information on REC prices in California is available. Parties may file a petition for modification of this decision once net surplus generators meet CEC RPS eligibility requirements, their RECs are tracked through a CEC-approved process, and REC trading provides new information on renewable prices. If such a petition is filed, it should, among other things, supply new information for the Commission to consider in the valuation of the renewable attributes of net surplus generation. Any petition should also address the process by which all customers will certify to their REC ownership prior to receiving compensation.”

In Decision 11-12-052 issued December 21, 2011 the Commission found [at page 56] regarding the price paid for RECs “In making an upfront showing in an advice letter seeking approval of a contract for unbundled RECs, an IOU must show, for contracts signed prior to December 31, 2013, that the levelized price does not exceed \$50/REC.^[8]”

In fact the Commission [and California for that matter] has no way to determine the value of RECs because there is no RECs trading market in the state to base its findings on; and by finding regarding the renewable attributes value the “IOU must show, for contracts signed prior to December 31, 2013, that the levelized price does not exceed \$50/REC” the decision is legally vulnerable to Constitutional challenge because it discriminates against in-state generation by

⁸ Once the Commission implements the cost containment mechanism called for in new § 399.15(c), the upfront showing that must be made by IOUs on the cost of REC-only contracts may change.

imposing different requirements on in-state versus out-of-state generators in violation of the Commerce Clause.⁹

In fact there has existed a REC market in the state of New Jersey operating since August 2004.¹⁰ As table 1 below demonstrates the “ceiling” of \$50/MWh the state has adopted for the renewable attributes value in RECs was the “floor” in the New Jersey REC market, and \$675 was the maximum price paid for RECs during the last six months reported.

Current SREC Trading Statistics Energy Year 2012

For SRECs from electricity produced June 1, 2011 – May 31, 2012. Includes transactions during the true-up period.

EY2012 SACP=\$658			SREC Quantity		Monthly		Cumulative	
Month	Year	Active kW DC	Issued in Month	Traded in Month	High (\$/MWh)	Low (\$/MWh)	# of SRECs Traded	Weighted Avg Price (\$/MWh)
Sept	2012							
Aug	2012							
Jul	2012							
Jun	2012							
May	2012							
Apr	2012							
Mar	2012							
Feb	2012							
Jan	2012	520,656	42,745	50,186	\$669	\$115	221,099	\$373.75
Dec	2011	487,015	40,594	52,716	\$658	\$115	170,913	\$369.46
Nov	2011	433,421	36,897	52,024	\$650	\$100	118,197	\$353.21
Oct	2011	416,715	34,467	34,724	\$658	\$120	66,173	\$403.07
Sept	2011	404,813	45,941	18,412	\$675	\$50	31,449	\$401.90
Aug	2011	387,733	48,535	12,252	\$665	\$100	13,037	\$410.48

⁹ See, United States Constitution, Article I, Section 8, Clause 3.

¹⁰ See <http://www.njcleanenergy.com/renewable-energy/project-activity-reports/srec-pricing/srec-pricing>

July	2011	355,051	37,738	785	Due to low trade volume, the July trades are reported with the cumulative pricing data starting in August.
Total			286,917	221,099	

Table 1

But even this \$50/MWh the state has adopted for the renewable attributes value in RECs is not even part of the proposed standard form contract. Instead RECs have no value what ever under the terms of the contract. “Green Attributes. Seller hereby provides and conveys all Green Attributes [i.e., Attributes based on name-plate capacity] associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.”

By valuing RECs at \$0.00/MWh the Commission essential defeats the whole purpose of the REC market, which is competitive trading, which means a large number of participants. In the New Jersey market that was as much as 52,716 trades monthly. As an example of the pricing for a 1.5MW nameplate capacity, based on costing for SFUI’s project, as shown in table there is a significant loss in the REC market for any seller who happens to be located in California under the Commissions draconian decisions.

Month	Power to Grid (kWh)	Power to Grid (MWh)	Revenue	REC Revenue @\$50/MWh	REC Revenue @\$670/MWh
Jan	237089	237	\$ 23,767	\$ 11,854	\$ 158,850
Feb	261946	262	\$ 26,258	\$ 13,097	\$ 175,504
Mar	375158	375	\$ 37,607	\$ 18,758	\$ 251,356
Apr	436162	436	\$ 43,722	\$ 21,808	\$ 292,228
May	508249	508	\$ 50,948	\$ 25,412	\$ 340,527
Jun	514357	514	\$ 97,751	\$ 25,718	\$ 344,619
Jul	512045	512	\$ 97,311	\$ 25,602	\$ 343,070

Aug	486530	487	\$ 92,462	\$ 24,327	\$ 325,975
Sep	405083	405	\$ 76,984	\$ 20,254	\$ 271,406
Oct	349244	349	\$ 35,009	\$ 17,462	\$ 233,993
Nov	262182	262	\$ 26,282	\$ 13,109	\$ 175,662
Dec	211806	212	\$ 21,940	\$ 10,590	\$ 141,910
Annual Elec.	4559851	4560	\$ 630,042	\$ 227,993	\$3,055,100

Table 2

Once the Commission implements the cost containment mechanism called for in new § 399.15(c), the upfront showing that must be made by IOUs on the cost of REC-only contracts may change. Therefore to reflect this the proposed contract is changed as follows.

“Green Attributes are not being conveyed free of charge to Buyer in this Power Purchase Agreement. Green Attributes are being retained by the Seller which are then sold at market value based on TOD factors.”

“Seller hereby provides and conveys all Green Attributes [i.e., Attributes based on name-plate capacity] associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.”

“Payment for Green Attributes shall be billed to Buyer monthly on the basis of a 30-day average price as recorded on the New Jersey Solar Renewable Energy Credit Trading Market until such time as California has an open trading REC market established for six months. At that time the 30-day average will be computed using California’s recorded daily REC trading prices.”

V. CONCLUSION

SFUI and CARE provides, per the Workshop held on February 22, 2012, the IOUs requested any red-line edits to the Joint IOU PPA by Monday February 27, 2012 by 12 pm, a

redlined and final version of the Joint IOU PPA [Appendix A and B herein].¹¹

Pursuant to Federal Energy Regulatory Commission (“FERC”) Order 133 FERC 61,059; states may “set a utility’s avoided costs...means that where a state requires a utility to procure a certain percentage of energy from generators with certain characteristics, generators with those characteristics constitute the sources that are relevant to the determination of the utility’s avoided cost for that procurement requirement.”; 134 FERC 61,044, clarifying that “should California choose to do so, implementation of a multi-tiered avoided cost rate structure can be consistent with the avoided cost rate requirements set forth in PURPA...”

In the absence of the CPUC hold hearings for the purposes of adopting avoided cost pricing tiered by energy generator type, and size, for their regulated utilities; Pacific Gas and Electric Company (“PG&E”); Southern California Edison Company (“SCE”), and San Diego Gas and Electric Company (“SDG&E”); the Commission could establish as a place holder for the utility’s avoided cost indexing, based on the utility’s Levelized Cost of Energy (“LCOE”) for their utility owned generation (“UOG”); tiered by energy generation type, and size; under the same terms and conditions of energy and/or capacity production of the utility’s own energy resource; with the avoided cost price indexed to UOG capital and operations and maintenance (“O&M”) costs in utility’s previous year’s annual General Rate Case (“GRC”). The value of RECs is strictly a state program independent from PURPA pricing for QFs.

Respectfully submitted,



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¹¹ Any red-line edits are to be sent directly to Lauren Rohde (ldri@pge.com).

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February 27, 2012

Verification

I am an officer of the Intervening Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 27th day of February 2012, at San Francisco, California.



Lynne Brown Vice-President
CALifornians for Renewable Energy, Inc. (CARE)

Verification

I am an officer of the Intervening Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

R11-05-005 (RPS) Sec. 399.20 program SFUI and CARE comments on the Joint IOU PPA

I declare under penalty of perjury that the foregoing is true and correct.
Executed on this 27th day of February 2012 at Vista, California.

/S/ Mary C. Hoffman
Mary C. Hoffman, President
Solutions For Utilities, Inc.

APPENDIX A -- RED-LINE EDITS TO THE JOINT IOU PPA

R11-05-005 (RPS) Sec. 399.20 program SFUI and CARE comments on the Joint IOU PPA

R11-05-005 (RPS) Sec. 399.20 program SFUI and CARE comments on the Joint IOU PPA

APPENDIX B -- FINAL EDITS TO THE JOINT IOU PPA